



DOCKET NO.: 231191US26

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

GROUP: 3721

Aline ABERGEL

SERIAL NO: 10/698,415

EXAMINER: WEEKS, GLORIA R.

FILED: November 3, 2003

FOR: PACKAGING A PRODUCT AND PACKAGING METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s). No more than five (5) pages are provided.

I am the attorney or agent of record.

Respectfully Submitted,

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MAIER & NEUSTADT, P.C.



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(OSMMN 07/05)



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REMARKS ACCOMPANYING
PRE-APPEAL BRIEF REQUEST FOR REVIEW

I. BREIF DESCRIPTION OF DISCLOSURE

The claimed invention relates to a device to package a product. The device includes a support having two faces and at least one cavity passing at least partially through the support. The cavity opens on a first face of the two faces through a first opening and contains a product. A lid is articulated to the support.

Applicant has recognized an advantageous arrangement where a sticker forming a mirror is adhesively bonded onto one of the faces of the lid and one of the faces of the support to provide the articulation. Thus, Claim 1 recites, *inter alia*, a support and a lid that are articulated to each other by an arrangement including a sticker forming a mirror adhesively bonded onto a face of the lid and onto one of the faces of the support.

Applicant has also recognized an advantageous arrangement where the cavity opens on the second face of the support through a second opening and an adhesive sheet, that is fixed onto one face of the lid and onto one face of the support closes off the second opening. Thus, Claim 16 recites, *inter alia*, a support and a lid that are articulated to each other by an arrangement including an adhesive sheet fixed onto one face of the lid and onto one of the faces of the support, in which the adhesive sheet closes off a second opening of a cavity with a portion of the adhesive sheet which covers the second opening directly facing the second side of the product contained in the cavity.

II. FAILURE TO PRESENT A *PRIMA FACIE* CASE OF OBVIOUSNESS

Applicant submits that the Office Action of October 17, 2006 has failed to provide a *prima facie* case of obviousness under 35 U.S.C. § 103 with respect to Claims 1-3, 8, 9, and 13-15 or with respect to Claims 7, 16, 18 and 33.¹

¹ See Office Action of October 17, 2006 detailing the rejection of Claims 1-3, 8, 9, and 13-15 under 35 U.S.C. § 103 based on U.S. Patent Publication No.2004/003825 (hereinafter Kelly) in view of U.S. Patent No. 4,491,389 (hereinafter Coburn) and U.S. Patent No. 6,412,640 (hereinafter Destanque); and detailing the rejection of

Applicant initially notes that the Office Action of May 3, 2006 acknowledged that Applicant presented persuasive arguments in the Appeal Brief filed on February 15, 2006, to overcome rejections based on the Kelly, Coburn, and Guiard references. The Office Action of October 17, 2006 now applies Parrotta and Destanque in addition to these references. Applicant respectfully submits that these new references include the same deficiencies as those found in the Kelly, Coburn, and Guiard references.

Pending Claims 1-3, 8, 9, and 13-15 stand rejected under 35 U.S.C. § 103 as unpatentable over Kelly in view of Coburn and Destanque. As outlined in detail in the response filed August 03, 2006, this rejection is deficient in that even if the proposed combination is assumed to be proper, the proposed combination fails to teach every claimed element. Specifically, the proposed combination fails to teach that the support and the lid are articulated to each other by an arrangement comprising a sticker forming a mirror adhesively bonded onto a face of the lid and onto one of the faces of the support.

In response to Applicant's remarks filed August 03, 2006, the Office Action of October 17, 2006 in the section entitled "Response to Arguments" asserts:

...Coburn discloses provision of a plastic molded surface, which is equivalent to Applicant's lid, Coburn teaches applying a mirror to the lid. As a sticker is defined as an adhesive label or patch, Examiner has found the metallic foil (30) attached to an adhesive foam (26) to adequately define a mirror sticker, wherein the mirror sticker (26, 30) is attached/adhered to the lid (14) of Coburn.

This position reflects a clear misreading and inconsistent application of Coburn. In the same Office Action that element 30 is characterized as a metallic foil, element 30 is also characterized as a layer of aluminum paint and a layer of metallized paint.² By contrast, Coburn describes that metallized surface 30 may be suitably formed from aluminum by various well-known vacuum deposition techniques without making any mention, to the best

Claims 7, 16, 18 and 33 under 35 U.S.C. § 103 based on Kelly in view of PCT Publication No. 97/15910 (hereinafter Guiard) and U.S. Patent No. 4,890,872 (hereinafter Parrotta).

² See the Office Action of October 17, 2006 at page 6, line 12; and page 3, line 9.

of Applicant's knowledge, of paint.³ As can be seen in Figure 2, Coburn describes that mirror 12 includes plastic layer 14, closed cell polyether foam 26, polyester 28, and the metallized surface 30.⁴ Thus, upon reviewing Coburn, a person of ordinary skill in the art at the time of the invention may consider a commonly practiced vacuum deposition technique (such as sputtering) to form metallized surface 30 of mirror 12. However, a person of ordinary skill in the art at the time of the invention would not understand vacuum deposition techniques to mean painting a surface or placing a foil. Moreover, the polyether foam 26 that absorbs the surface irregularity of the plastic layer 14 and causes the plastic layer 14 to support a layer of polyester 28 provided with a metallized surface 30 of the mirror 12 does not disclose or suggest a mirror formed of a sticker, as presently claimed.⁵

Claim 1 not only recites a sticker forming a mirror but also recites, *inter alia*, that the sticker forming a mirror articulates the support and the lid. Coburn does not disclose or render obvious that the metallized surface 30 could articulate a support and a lid. At best, if one were to modify the teachings of Kelly in view of the teachings of Coburn, one would simply substitute the mirror 22 in the lid of Kelly with a mirror formed with a surface as disclosed by Coburn. The Office Action asserts that Destanque discloses that forming a mirror on multiple surfaces of a packaging device allows a user the advantage of utilizing a mirror without opening a packaging device. However, including multiple surfaces forming a mirror does not cure the current deficiency because there is nothing whatsoever to suggest to provide a sticker which **both** provides an articulation between a support and a lid, **and** which forms a mirror. As discussed above, the mirror 12 disclosed in Coburn has a foam layer 26 and a plastic layer 14. Thus, a person of ordinary skill in the art at the time of the invention would recognize that the mirror of Coburn is not suitable to articulate a support and a lid, as

³ See Coburn, at column 3, lines 1-4.

⁴ See Coburn, at column 2, lines 57-64.

⁵ See Coburn, at column 2, lines 57-64.

presently claimed. Thus, the proposed combination of Kelly, Coburn, and Destanque fails to teach every claimed element.

As such, Applicant respectfully submits that a *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests that the rejection of Claims 1-3, 8, 9, and 13-15 under 35 U.S.C. §103 be withdrawn and the present application be allowed.

Pending Claims 7, 16, 18 and 33 are rejected under 35 U.S.C. § 103 based on Kelly in view of Guiard and Parrotta. As outlined in detail in the response filed August 03, 2006, this rejection is deficient in that even if the proposed combination is assumed to be proper, the proposed combination fails to teach every claimed element. Specifically, the proposed combination fails to teach a support and a lid articulated to each other by an arrangement comprising an adhesive sheet fixed onto one face of a lid and onto one face of a support wherein the adhesive sheet closes off the second opening of the cavity with a portion of the adhesive sheet which covers the second opening directly facing the second surface of the product contained in the cavity.

In response to Applicant's remarks filed August 03, 2006, the Office Action of October 17, 2006 in the section entitled "Response to Arguments" asserts:

...[N]ot only would it have been obvious to one having ordinary skill in the art at the time of the invention to modify the support of Kelly to include a second opening closed by the adhesive sheet, since Guiard teaches that such a modification allows the product to be secured in the support, but it would have been further obvious to omit the provision of the tray since Parrotta et al. teaches that it is also known in the art of packaging to apply the cosmetic composition in a cavity (22) onto an adhesive sheet (34) without the use of additional retaining structure.

Beginning with Parrotta, the above response fails to address that Parrotta does not disclose or render obvious an adhesive sheet which covers the second opening **and** which provides an articulation between a lid and a support. As can be seen in Figure 2, Parrotta merely describes a barrier layer 34 which provides an impervious surface for the material

enclosed within an item.⁶ Neither Kelly nor Guiard cure this deficiency. Instead, as can be seen in Figure 3 and as described in paragraph [0018], Kelly describes a cloth material 20 which is positioned on the base 14 and lid 16 to cover the exposed surfaces of the cosmetic case 10. The cloth material 20 is secured to the base and the lid 16 through adhesive bonding. The base 14, lid 16 and first hinge 24 are constructed of a material, such as cardboard. Thus, the hinges of Kelly are formed by a cardboard material which is covered with a cloth that is fixed through adhesive bonding. No portion of the cloth or cardboard material closes off a cavity containing the cosmetic material 12.

Guiard merely discloses a means 22 for attaching tray 18 to the holder, as described in the Abstract and depicted in Figure 3. The means 22 does not cover the second opening directly facing the second side of the product contained in the cavity. Nor does the means 22 provide an articulation of the lid to the support. The Office Action of October 17, 2006 asserts that Guiard further discloses providing an adhesive sheet directly over the second opening of the cavity. As discussed above, means 22 covers the tray 18 and not the material 20. Thus, the proposed combination of Kelly, Guiard, and Parrotta fails to teach every claimed element.

As such, Applicant respectfully submits that a *prima facie* case of obviousness has not been established. Accordingly, Applicant respectfully requests that the rejection of Claims 7, 16, 18 and 33 under 35 U.S.C. §103 be withdrawn and the present application be allowed.

CONCLUSION

As the Office has failed to establish a *prima facie* case of obviousness in view of the clear factual and legal deficiencies outlined above, Applicant respectfully submits that this application is now in condition for allowance.

⁶ See Parrotta, at column 2, lines 35-42.